

## **PPRTA 3 PROJECT ADVANCEMENT FUNDING INTERGOVERNMENTAL AGREEMENT**

THIS PPRTA 3 PROJECT ADVANCEMENT FUNDING INTERGOVERNMENTAL AGREEMENT (this “**Agreement**”) is made and entered into as of \_\_\_\_\_, 2024 (the “**Effective Date**”) by and among the PIKES PEAK RURAL TRANSPORTATION AUTHORITY, a body corporate and political subdivision of the State of Colorado (“**PPRTA**”) and CITY OF COLORADO SPRINGS, a home rule city and Colorado municipal corporation (the “**City**”). PPRTA and the City may hereinafter be collectively referred to as the “**Parties**” and individually as a “**Party**.”

### **RECITALS**

**WHEREAS**, capitalized terms used and not defined in these Recitals shall have the meaning assigned to them in Section 1 hereof; and

**WHEREAS**, PPRTA is a regional transportation authority that was created pursuant to Sections 43-4-601 *et seq.*, C.R.S. by several governments, including the City of Colorado Springs, upon approval of the voters residing in the respective jurisdictions of such governments at the general election held on November 2, 2004; and

**WHEREAS**, at the general election held on November 2, 2004, the PPRTA’s voters approved a ballot question authorizing an imposition of a 1% sales and use tax on certain transactions occurring within the boundaries of PPRTA with 55% of the net revenue thereof for specific regional roadway capital improvements (as amended and extended by the PPRTA 2 Authorization and the PPRTA 3 Authorization the “**PPRTA Tax**”) until December 31, 2014 for the purposes of funding certain regional transportation capital improvements included in priority “A” projects, priority “B” projects, and priority “C” projects of the ballot question (the “**PPRTA 1 Authorization**”), provided that priority “A” projects are completely funded prior to the use of funding on priority “B” projects and that priority “B” projects are completely funded prior to the use of funding on priority “C” projects; and

**WHEREAS**, at the general election held on November 6, 2012, the PPRTA’s voters approved a ballot question authorizing an extension until December 31, 2024 of the PPRTA Tax for the purposes of funding certain regional transportation capital improvements included in priority “A” projects and priority “B” projects of the ballot question (the “**PPRTA 2 Authorization**”), provided that priority “A” projects are completely funded prior to the use of funding on priority “B” projects; and

**WHEREAS**, at the general election held on November 8, 2022, the PPRTA’s voters approved a ballot question authorizing an extension until December 31, 2034 of the PPRTA Tax for the purposes of funding certain regional transportation capital improvements included in priority “A” projects and priority “B” projects of the ballot question (the “**PPRTA 3 Authorization**”), provided that priority “A” projects are completely funded prior to the use of funding on priority “B” projects; and

**WHEREAS**, the activities of the PPRTA are governed by, among other things, the PPRTA IGA and the City Comprehensive IGA; and

**WHEREAS**, pursuant to the PPRTA 1 Authorization, the PPRTA 2 Authorization, the PPRTA 3 Authorization, and the PPRTA IGA, proceeds of the PPRTA Tax are to be distributed to fund capital projects, maintenance projects, and transit services, the distribution of which is detailed in separate intergovernmental agreements between PPRTA and its member governments, including the City Comprehensive IGA; and

**WHEREAS**, the Parties have and hereby do determine that the Project is a regional transportation project and that completion of the Project will benefit their residents, promote economic growth and reduce congestion and traffic in the City and County; and

**WHEREAS**, the PPRTA 3 Authorization included “Nevada Ave Reconstruction - Rock Island Railroad to Commerce St” and “Nevada Ave Reconstruction - Commerce St to Templeton Gap Floodway” as priority “A” projects; and

**WHEREAS**, in order to facilitate the purchase of real estate needed for the aforementioned projects which may not otherwise be available or the cost of which may increase notwithstanding the City’s advancement of the aforementioned projects approved as part of the PPRTA 3 Authorization, the Parties wish to enter into this Agreement to establish the terms and conditions under which PPRTA intends to utilize a portion of the PPRTA Tax to reimburse the City for Approved Project Costs.

## **AGREEMENT**

**NOW, THEREFORE**, in consideration of the foregoing and the covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

**1. Definitions.** As used herein, unless the context expressly indicates otherwise, the words capitalized in the text of this Agreement shall have the respective meanings set forth below.

“**Agreement**” means this PPRTA 3 Project Advancement Funding Agreement and any amendment or supplements hereto made in accordance herewith.

“**Appropriation**” or “**Appropriated**” means the action of the Board taken as part of its annual budget process to appropriate funds for specific voter-authorized projects as recommended by its member governments, including the City, to pay all or a portion of the Approved Project Costs.

“**Approved Project Costs**” has the meaning assigned to it in Section 6 hereof.

“**Board**” means the PPRTA Board of Directors.

“**Business Day**” or “**Business Days**” means any day other than a Saturday, Sunday or Colorado or federal legal holiday.

“**City**” has the meaning assigned to it in the preamble and includes its successors and assigns.

“**City Comprehensive IGA**” means the Second Amended and Restated Intergovernmental Agreement for Pikes Peak Rural Transportation Authority Funded Capital Projects, Maintenance Programs and City Sponsored Transit Activities by and between the PPRTA and the City, as it may be further amended or supplemented from time to time.

“**City Representative**” means the Director of Public Works, the City Engineer, or any alternate or alternates designated in writing by the Director of Public Works or City Engineer and provided to the PPRTA.

“**C.R.S.**” means Colorado Revised Statutes, as amended.

“**Effective Date**” has the meaning assigned to it in the preamble.

“**Project**” means the acquisition and purchase costs for real estate needed for public improvements consistent with the voter-approved priority “A” projects listed as “Nevada Ave Reconstruction - Rock Island Railroad to Commerce St” and “Nevada Ave Reconstruction - Commerce St to Templeton Gap Floodway” in the PPRTA 3 Authorization.

“**Project Costs**” means the reasonable expenditures for the Project, including, but not limited to real estate acquisition and purchase costs.

“**PPRTA**” has the meaning assigned to it in the preamble and includes its successors and assigns.

“**PPRTA IGA**” means the Fifth Amended and Restated Intergovernmental Agreement among the County, the City, the City of Manitou Springs, the Town of Green Mountain Falls, the Town of Ramah, and the Town of Calhan Regarding the Pikes Peak Rural Transportation Authority, as it may be further amended or supplemented from time to time.

“**PPRTA Representative**” means the PPRTA Board Secretary, or any alternate or alternates designated in writing by the PPRTA and provided to the City.

“**PPRTA Tax**” has the meaning assigned to it in the Recitals.

“**PPRTA 2 Authorization**” has the meaning assigned to it in the Recitals.

“**PPRTA 3 Authorization**” has the meaning assigned to it in the Recitals.

“**State**” means the State of Colorado.

“**Statement**” has the meaning assigned to it in Section 6 hereof.

“**Term**” means the period of time during which this Agreement remains in effect as described in Section 4 hereof.

“**Total Funding Amount**” means a maximum amount of two million six hundred thousand dollars and zero cents (\$2,600,000.00).

## 2. Interpretation.

(a) the terms “herein,” “hereunder,” “hereby,” “hereto,” “hereof,” and any similar term, refer to this Agreement as a whole and not to any particular article, section, or subdivision hereof; the term “heretofore” means before the Effective Date of this Agreement, and the term “hereafter” means after the Effective Date of this Agreement;

(b) words of the masculine gender include correlative words of the feminine and neuter genders; words importing the singular number include the plural number and vice versa; and the word “person” or similar term includes, but is not limited to, natural persons, firms, associations, corporations, partnerships, and public bodies;

(c) the captions or headings of this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any provision, article, or section of this Agreement;

(d) all exhibits referred to herein are incorporated herein by reference;

(e) all of the recitals set forth at the beginning of this Agreement are hereby incorporated in this Agreement as if fully set forth herein.

**3. Authority.** This Agreement is made and entered into under authority of the Colorado Constitution, Article XIV, Section 18(2)(a) and Article XX, Section 6, Section 29-1-203, C.R.S., Sections 43-4-601 et seq., C.R.S., and the PPRTA IGA.

**4. Term.** This Agreement shall commence on the Effective Date and, unless this Agreement is sooner terminated by written agreement of the Parties, shall terminate on December 31, 2024 and shall automatically renew on January 1, 2025 for a one-year term and shall thereafter automatically renew each January 1 until the earlier of (i) the date on which PPRTA has collected and spent all of the PPRTA Tax received pursuant to the PPRTA 3 Authorization or (ii) the date all Approved Project Costs up to the Total Funding Amount have been reimbursed to the City in full.

**5. Adjustment of Total Funding Amount.** The Total Funding Amount represents the anticipated cost of property acquisition. The Total Funding Amount may be adjusted only by written agreement of the Parties in the form of an amendment to this Agreement.

**6. Approval of Project Costs.**

(a) The City shall provide or cause to be provided to the PPRTA, a written statement (each, a “**Statement**”) with reasonably sufficient information and background material relating to each Statement to allow the PPRTA to verify that the amounts described in the Statement (1) were applied by the City to pay or reimburse Project Costs, (2) are reasonable and are comparable for similar projects as constructed in the Colorado Springs Metropolitan Area, and (3) are eligible for reimbursement from the PPRTA Tax. In addition, the City shall attest that the amounts of Project Costs described in the Statement are eligible for reimbursement pursuant to this Agreement. Upon receipt of the Statement and supporting documentation, the PPRTA may, within fifteen (15) Business Days, request additional information which the PPRTA reasonably determines is needed in order to verify that the amounts requested in the Statement are being applied to reimburse the Project Costs. Within fifteen (15) Business Days from the later of (i) receipt of the Statement or

(ii) receipt of any requested additional information pursuant to this subparagraph, the PPRTA Representative shall either approve the Statement by signing the same and sending the executed original to the City or provide to the City a written objection to all or any portion of the Project Costs in the related Statement, together with a detailed explanation of the basis upon which the PPRTA Representative objects to the validity of all or a portion of the Project Costs included in the Statement. If the PPRTA Representative does not deliver a timely executed approval of the Statement or a written objection as set forth above, such failure to provide a timely executed approval of the Statement or a written objection shall be deemed an approval of the Project Costs included in the Statement by the PPRTA.

(b) If the PPRTA and the City have not satisfactorily resolved any such objection within fifteen (15) Business Days from the date when the City received the timely objection from the PPRTA in accordance with subsection (a) above, then within the following five (5) Business Days, the PPRTA Representative and the City Representative shall jointly select and engage an independent engineer to resolve the dispute and make a determination regarding the Project Costs, which shall be rendered within ten (10) Business Days from the date of the engagement and shall be final and binding on the Parties. The PPRTA and the City shall equally share in the costs of the independent engineer review.

(c) Any Project Costs in the Statement that are approved, deemed approved, approved as a result of the independent engineer's determination or are not subject to objection pursuant to this Section 6 shall constitute "**Approved Project Costs**" and shall be subject to reimbursement by PPRTA from the PPRTA Tax up to the Total Funding Amount, subject to Appropriation by the Board as set forth in Section 7 hereof and subject to the limitations described in Section 10 hereof.

## **7. Budgeting and Appropriation of the Total Funding Amount.**

(a) The Parties acknowledge and agree that Approved Project Costs are PPRTA costs which are eligible to be funded with the PPRTA Tax up to the Total Funding Amount. Commencing in 2024 (for the budget year 2025) and in each year thereafter during the Term, the officers of the City charged with the responsibility of formulating budget proposals for the PPRTA are hereby directed to include in the annual budget proposals the Total Funding Amount still outstanding for which Project Costs have been incurred by the City and submit the same for review and approval to the Board. Notwithstanding this directive regarding the formulation of budget proposals, it is the intention of the Parties that any decision to effect an Appropriation for the Approved Project Costs shall be made solely by the Board in its absolute discretion and shall be subject to the availability of funds and appropriations thereof.

(b) PPRTA shall disburse the PPRTA Tax for which an Appropriation has been effected by the Board, up to the Total Funding Amount, directly to the City or its designee, provided however that such disbursement shall be made only with respect to (and up to) the then-current Approved Project Costs in accordance with Section 7(c) below. Subject to Section 7(c) below, such payments shall be made in monthly installments by the end of each calendar month commencing in the first calendar month in which PPRTA receives the first PPRTA Tax attributable to the Total Funding Amount, for which an Appropriation has been effected by the Board, subject to availability of funds after the PPRTA honors its other contractual payment obligations, until such Appropriated amounts are fully paid.

(c) The Parties acknowledge and agree that while it is not necessary for the Approved Project Costs to be equal to or exceed the amounts that are included in the annual budget proposals for appropriation by the Board or at the time such amounts are Appropriated by the Board, the actual disbursement of the PPRTA Tax for which an Appropriation has been effected by the Board shall be made only for the Approved Project Costs. In the event that the PPRTA Tax for which an Appropriation has been effected by the Board exceeds the Approved Project Costs, PPRTA shall hold such PPRTA Tax in its account and disburse it to the City or its designee in the first month following the month in which there are sufficient Approved Project Cost.

(d) Upon written confirmation by the PPRTA Representative and the City Representative that the Project is complete and the written confirmation by the City Representative that the City has submitted Statements for all Project Costs and that the review and approval process set forth in Section 6 hereof has been completed with respect to all such Statements, the Board may reallocate and reappropriate to other projects that portion of the PPRTA Tax, if any, for which Appropriations have been effected by the Board and which exceeds the Approved Project Costs.

**8. Contracting for Project.** The Parties acknowledge and agree that the City will enter into contracts to complete the Project solely in its name and administer such contracts in accordance with all applicable federal, State, or local laws and regulations, including but not limited to those of the Colorado Department of Transportation, and that, notwithstanding any applicable terms of the City Comprehensive IGA, the PPRTA will not be a party to those contracts.

**9. Books and Records; Auditing.**

(a) PPRTA shall maintain and make available to the City upon reasonable request, (1) true and complete records of PPRTA Tax received by the PPRTA as part of the PPRTA 3 Authorization, provided that the information regarding PPRTA Tax may be provided on an aggregate basis without identifying individual taxpayer information, (2) annual budgets, (3) detail on funding of each project in the PPRTA 3 Authorization, including budgeting information, and (4) the amount of the total PPRTA Tax paid to the City.

(b) The City shall maintain and make available, or cause to be maintained and be made available, to the PPRTA upon reasonable request, true and complete records of the PPRTA Tax received by the City from PPRTA, the project Costs, the Statements and all supporting documentation provided in connection with each Statement, the Approved Project Costs, and copies of contracts and documentation pertaining to design, construction, and improvement of the Project.

**10. Nature of Obligations.** It is hereby agreed and acknowledged that while this Agreement evidences an intent of the PPRTA to reimburse the City for the Approved Project Costs incurred by the City for the Project as further set forth herein, this Agreement shall not constitute or be interpreted as constituting a general obligation, debt or indebtedness of the PPRTA within the meaning of any constitutional or statutory provision, nor shall it constitute a multiple fiscal year financial obligation of the PPRTA, and the appropriation and expenditure of PPRTA Tax and the making of any reimbursement hereunder shall be at all times subject to the annual appropriations by Board. The PPRTA may reimburse the City for Approved Project Costs, if any,

consistent with the provisions of this Agreement, with any legally available funds of the PPRTA. Nothing herein is intended to be or shall be deemed or construed to create a “bond” within the meaning of Section 7.11 of the PPRTA IGA. No provision of this Agreement shall be construed to pledge or to create a lien on PPRTA Tax or any other PPRTA assets or funds.

**11. Manner of Payments.** Payments up to the Total Funding Amount, for which an Appropriation has been effected by the Board, shall be made by PPRTA to the City or its designee at its designated office by wire transfer of federal funds, certified funds or other method of payment acceptable to the City or its designee in lawful money of the United States of America.

**12. Prohibition of Adverse Budget or Appropriation Modification.** To the extent permitted by law and subject to Appropriation by the Board as described in Section 7 hereof and the limitations described in Section 10 hereof, PPRTA shall not, during any calendar year while this Agreement is in effect, make any budgetary transfers or other modifications to its then existing budget and appropriation measures relating to reimbursement of Approved Project Costs which would adversely affect PPRTA’s ability to meet its obligation to pay duly Appropriated PPRTA Tax for that budget year up to the Total Funding Amount.

**13. Indemnification.** To the extent permitted by law, the City shall indemnify, defend, and hold harmless PPRTA and each of the governmental entities that is now or may in the future become a party to the PPRTA IGA, and each of their directors, employees, agents, and consultants, from and against any and all claims, demands, suits, actions, proceedings, judgments, losses, damages, injuries, penalties, costs, and expenses (including reasonable attorneys’ fees), and liabilities, of, by, or with respect to third parties (“Any Claims”) to the extent they arise from or may be alleged to arise, directly or indirectly, in whole or in part, from the intentional or negligent acts or omissions of the City or any of its subcontractors, material suppliers, agents, representatives, or employees, or the agents, representatives, or employees of any subcontractors or material suppliers, in connection with this Agreement including, without limitation, any claims which cause or allow to continue a condition or event which deprives the PPRTA or any of the governmental entities that is now or may in the future become a party to the PPRTA IGA, or any of their directors or employees of their sovereign immunity under the Colorado Governmental Immunity Act, Sections 24-10-101, et seq., Colorado Revised Statutes. Provided, however, that the City shall not be liable for any claim, loss, damage, injury, or liability arising out of the negligence of the PPRTA, its directors, employees, agents, and consultants. The City’s defense, indemnification, and insurance obligations shall be to the fullest extent permitted by law and nothing in this Agreement shall be construed as requiring the City to defend in litigation, indemnify, or insure the PPRTA against liability for damage arising out of the death or bodily injury to persons or damage to property caused by the negligence or fault of the PPRTA or any third party under the control or supervision of the PPRTA. The obligations of the indemnifications extended by the City under this Section shall survive termination or expiration of this Agreement.

**14. Events of Default and Remedies.** Upon a default of this Agreement, the non-defaulting party’s remedies shall be limited to the right to enforce the defaulting Party’s obligations hereunder by an action for equitable relief or specific performance, or by an action to collect and enforce payment of sums owing hereunder, and no other remedy, and no Party shall be entitled to or claim any other monetary damages.

**15. Notices.** All notices shall be deemed given when personally delivered, or five (5) Business Days following their mailing by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to PPRTA: Rick Sonnenburg, Secretary  
Pikes Peak Rural Transportation Authority  
15 S. 7th Street  
Colorado Springs, Colorado 80905

With a copy to: Jennifer L. Ivey  
Icenogle Seaver Pogue, P.C.  
4725 S. Monaco Street, Suite 360  
Denver, Colorado 80237

If to the City: Gayle Sturdivant, City Engineer  
30 South Nevada, Suite 401  
Colorado Springs, CO 80901

With a copy to: Office of the City Attorney  
30 South Nevada, Suite 501  
Colorado Springs, CO 80901

**16. Amendments.** This Agreement may be modified, amended, or changed, in whole or in part, only by an agreement in writing duly authorized and executed by the Parties. The mayor has authority to execute, administer and amend the Agreement on behalf of the City.

**17. Assignment.** Neither this Agreement, nor any Party's rights, obligations, duties, or authorities hereunder, in whole or in part, may be made without the prior written consent of the other Party, and any purported assignment otherwise shall be void and of no force and effect. Consent to one assignment shall not be deemed to be consent to any subsequent assignment, nor the waiver of any right to not consent to such subsequent assignment.

**18. Governing Law and Venue.** This Agreement shall be governed by the laws of the State of Colorado, and the Charter, City Code, Ordinances, Rules and Regulations of the City of Colorado Springs, and any legal action concerning the provisions hereof shall be brought in El Paso County, Colorado.

**19. Third Party Beneficiaries.** Nothing in this Agreement expressed or implied is intended or shall be construed to confer upon, or to give to, any person other than the Parties any right, remedy, or claim under or by reason of this Agreement or any covenant, condition, or stipulation hereof; and all the covenants, stipulations, promises, and agreements in this Agreement by and on behalf of any Party shall be for the sole and exclusive benefit of the Parties. It is the intent of the Parties hereto that there shall be no third party beneficiaries of this Agreement.

**20. No Waiver.** Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by the any Party shall not constitute a waiver of any of the other terms or obligations of this Agreement.



21. **Integration.** This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof, superseding all prior oral or written communications.

22. **Severability.** If any provision of this Agreement is found by a court of competent jurisdiction to be unlawful for any reason, the remaining provisions hereof shall remain in full force and effect.

23. **Relationship of the Parties.** The Parties shall not be deemed by virtue of this Agreement to have entered into any partnership, joint venture, employer/employee or other relationship with each other, other than as contracting parties.

24. **No Waiver of Governmental Immunity.** Nothing in this Agreement or in any actions taken by the Parties or their respective elected officials, directors, officers, agents and employees pursuant to this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions of the Colorado Governmental Immunity Act, Sections 24-10-101, *et seq.*, C.R.S.

25. **Counterparts; Copies of Signatures.** This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one (1) and the same instrument. The signature pages from one (1) or more counterparts may be removed from such counterparts and such signature pages all attached to a single instrument so that the signatures of all Parties may be physically attached to a single document.

26. **Electronic Signatures.** The Parties consent to the use of electronic signatures pursuant to the Uniform Electronic Transactions Act, Sections 24-71.3-101, *et seq.*, Colorado Revised Statutes, as may be amended from time to time. This Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the Parties. The Parties agree not to deny the legal effect or enforceability of this Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of this Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

[Signature pages follow]

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be duly executed and delivered by their respective authorized officers as of the date first above written.

**PIKES PEAK RURAL TRANSPORTATION AUTHORITY**

By: \_\_\_\_\_  
Chair

**CITY OF COLORADO SPRINGS, COLORADO**

By: \_\_\_\_\_  
Blessing Mobolade  
Mayor

ATTEST

\_\_\_\_\_  
Sarah B. Johnson, City Clerk

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Office of the City Attorney